

Message

From: Siciliano, CarolAnn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A0E84B7F6DDD4D92B99B2DBA90AA86B1-CSICILIA]
Sent: 8/28/2017 5:58:53 PM
To: Koslow, Karin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d00aa4f4fead4a3fa02f0cafe57ed221-Koslow, Karin]
Subject: RE: FYI - Notes from today's AF&PA meeting

Thank you!

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From: Koslow, Karin
Sent: Friday, August 25, 2017 9:56 AM
To: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>
Subject: FYI - Notes from today's AF&PA meeting

Keeping you in the loop – please see summary of yesterday's meeting below.

Note – the last item re: Justin asking for narrative – that was an ask he made of AF&PA, not us. OW is, however going to talk with R10 to get more information on how the WQSS are/are not impacting permitting actions.

Thanks,
Karin

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From: Maher, Lauren
Sent: Friday, August 25, 2017 8:35 AM
To: Fleisig, Erica <Fleisig.Erica@epa.gov>; Szelag, Matthew <Szelag.Matthew@epa.gov>; Macchio, Lisa <Macchio.Lisa@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Stern, Allyn <Stern.Alyn@epa.gov>; Brown, Leah <Brown.Leah@epa.gov>; Lidgard, Michael <Lidgard.Michael@epa.gov>; Chung, Angela <Chung.Angela@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Williamson, Timothy <Williamson.Tim@epa.gov>; Knapp, Michael <Knapp.Michael@epa.gov>; Siegal, Tod <Siegal.Tod@epa.gov>; Voorhees, Jeanne <voorhees.jeanne@epa.gov>; Abele, Ralph <abele.ralph@epa.gov>; Brundage, Jennifer <Brundage.Jennifer@epa.gov>; Crk, Tanja <Crk.Tanja@epa.gov>;

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Subject: RE: Notes from today's AF&PA meeting

Thanks so much Erica, these are excellent. I added one question from David that I had in my notes (he asked AFPA to explain their position on treating tribes as a high consuming sub-population, below in blue). Thank you for putting these all together.

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From: Fleisig, Erica

Sent: Thursday, August 24, 2017 11:08 PM

To: Szelag, Matthew <Szelag.Matthew@epa.gov>; Macchio, Lisa <Macchio.Lisa@epa.gov>; Szalay, Endre <Szalay.Endre@epa.gov>; Stern, Allyn <Stern.Alyn@epa.gov>; Brown, Leah <Brown.Leah@epa.gov>; Lidgard, Michael <Lidgard.Michael@epa.gov>; Chung, Angela <Chung.Angela@epa.gov>; Williams, Ann <Williams.Ann@epa.gov>; Williamson, Timothy <Williamson.Tim@epa.gov>; Knapp, Michael <Knapp.Michael@epa.gov>; Siegal, Tod <Siegal.Tod@epa.gov>; Voorhees, Jeanne <voorhees.jeanne@epa.gov>; Abele, Ralph <abele.ralph@epa.gov>; Brundage, Jennifer <Brundage.Jennifer@epa.gov>; Crk, Tanja <Crk.Tanja@epa.gov>; Buffo, Corey <Buffo.Corey@epa.gov>; Keating, Jim <Keating.Jim@epa.gov>; Hisel-McCoy, Sara <Hisel-McCoy.Sara@epa.gov>; Behl, Betsy <Behl.Betsy@epa.gov>; Maher, Lauren <Maher.Lauren@epa.gov>; Ford, Peter <Ford.Peter@epa.gov>; Schroer, Lee <schroer.lee@epa.gov>; Koslow, Karin <Koslow.Karin@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>

Subject: Notes from today's AF&PA meeting

All,

Please see the attached (and pasted below) notes from today's meeting with reps from the American Forest and Paper Association. I'll be seeking some input from R10 and R1 to prepare a simple write-up of EPA's position on these issues, for Sara to share with our managers as needed (particularly would appreciate help from R10 on the OR permitting pieces). Folks who attended the meeting, please edit/add anything I missed.

-Erica

Attendees: Jerry Schwartz, Paul Noe, James Tupper, Justin Schwab, David Fotouhi, Sarah Greenwalt, Lee Forsgren, Sara Hisel-McCoy, Lee Schroer, Pete Ford, Lauren Maher, Betsy Behl, Karin Koslow, Erica Fleisig

- AF&PA expressed concern that WA is starting to implement EPA's promulgated HHC (inc. in the Spokane River), and they emphasized several times that implementation of the criteria (especially for PCBs) will result in very high costs and no measurable benefits.
 - Cited HDR study that estimated costs in the billions.
 - Compared 10-6 cancer risk to other "remote" risks, such as the risk of being hit by an asteroid.
- Asked for EPA to approve WA's package, consistent with this administration's stated goals of cooperative federalism.
- Said that EPA's position on tribal treaty rights (which they noted are also at issue in ME and ID) is not adequately supported, and not a basis for rejecting WA's package.

- David F asked their position on whether EPA needs to reconcile the CWA with treaty rights when addressing a state's WQS submission, specifically “are these two federal laws that need to be reconciled?”
 - Response:
 - EPA “trotted out” treaty rights concept in 2012
 - No question that you have to reconcile the CWA and treaty rights, but there’s nothing in the treaties that addresses water quality, and nothing in the CWA that addresses treaty rights and water quality.
 - Black letter law - as long as you're complying with the CWA, you're complying with trust responsibilities.
 - EPA decided from the beginning that the criteria had to be based on a FCR of 175 g/day and a cancer risk level of 10-6 (AF&PA used the term “political juggernaut” several times), despite EPA’s 2000 HHM accepting cancer risk levels of 10-4 to 10-6 as essentially “de minimis.” EPA took the position that because there’s an obligation to consult with tribes and the tribes want this, we’re obligated to give it to them.
 - WA’s proposed (at 10-5) and final (at 10-6) criteria both ensured that there was “not a single consumer that would fall at less than 10-4.”
- Regarding EPA’s treatment of the tribes as the target population, AF&PA called that “a fabrication to a political end.” They disagreed with EPA’s use of the treaties to “construct” the subsistence designated use. Instead, they agreed that EPA’s distinction in the 2000 HHM between the general population and sensitive subpopulations makes sense from a science perspective.
- David F asked them to explain their position that tribal members should be treated as a high-consuming subpopulation rather than the general population?
 - James Tupper: Referred to the bell curve used to determine risk, and said that by treating tribes as the general population EPA was moving the bell curve, such that non-tribal fish consumers were getting protection at 10-8 and levels that EPA previously rejected.
 - Jerry: Once you remove the subsistence use, you don’t get to this question.
 - Justin S asked them to clarify: are you saying you reject the treaty rights framework, or that the State’s approach was adequately protective of treaty rights?
 - Jerry: Both- we are rejecting the framework and saying that protection for tribal fishers at 10-4 was adequately protective. EPA’s approach is just “moving a few decimal points”
- David F asked their position on unsuppressed consumption.
 - Response:
 - The theory for unsuppressed consumption is based on EPA’s position on tribal treaty rights, so if you take away that foundation, that issue goes away.
 - It is a leap to take something like the Wabanaki study and take the position that we're going to go back to the 1800s/1900s and discern historical consumption, and then say that's the rate we're going to use to protect the population today. Assumption is that if the numbers weren't suppressed, everyone in the tribe would be consuming today the same level of fish they consumed in the 1800s/1900s, and nothing has changed in those societies in all these years. AF&PA’s comments in ME explain that this is a “fallacy.”
- PCBs:
 - EPA did not update its recommended criteria for PCBs in 2015.
 - Disconnect between CWA and TSCA – inadvertently generated PCBs a problem, and EPA says there is scientific uncertainty and future evaluation needed to address the different PCB allowances under the CWA and TSCA.
 - Final rule leads to a huge number of waters impaired for PCBs, and resulting TMDLs with no benefits since PCBs are a legacy pollutant.
 - Betsy S presented this as not a problem because PCB test method doesn't detect to criteria levels. However, Ecology is using other test methods, and there is a draft permit issued by R10 in June to a pulp and paper mill in Idaho that requires monitoring up and downstream using more sensitive test method. Jerry acknowledged that the more sensitive method is not approved for permit compliance, however.
- David F asked whether besides treaty rights issues (and related sub-issues), whether there are any technical considerations EPA should keep in mind when we're reviewing the petition.
 - Paul: There was a political decision the last administration made, and the tribal treaty rights thing was a way to justify that. If you want to help these people, isn't there something in the vast power of the agency that would do that? You're imposing a train wreck on all of these sources, for no discernable health

improvement. I would hope the federal government could find a better way if they want to actually help these people.

- James: No one questions the commitment of these states to protecting the environment and the people living there. Notion of the Agency bullying the states is in contrast to cooperative federalism. Want a workable regulatory and permitting system. Creating an unsustainable result that doesn't stand up to good science or good logic.
- Jerry: James hit on important risk policy point. We are saying here that 10-6 and only 10-6 is protective. Significant policy ramifications in Superfund, Air, etc. Undermining the previous position that 10-4 to 10-6 is all de minimis has big ramifications. Additionally, FCRs are used in other places - Superfund, Air - so implications are significant.
- AF&PA noted that OR already has HHC based on 175 g/day and 10-6 (alleging OR adopted these HHC because EPA commandeered their technical advisory committee and insisted upon these inputs). Since then, OR has only issued one NPDES permit (WWTP) to the HHC. Has created a deadlock in the OR permitting program. WA Ecology warned R10 of this issue last January. If you stop the permitting program, the overarching goal of the CWA to maintain and improve waters is stymied.
 - Justin Schwab wants a written narrative describing this issue of halting permitting progress. Wants to know how many permits were previously issued on average in OR, compared to now (post HHC).
 - James to provide a study done by an outside consultant, and the minutes from the Spokane Task Force where Ecology confronted R10 with this dilemma.